

## **A. SOLID WASTE PLANNING**

### **A.1. Synopsis of Significant Legal Decisions since the last State Plan**

As the most densely populated state in the union, located between major metropolitan centers, New Jersey has long been a battleground over solid waste disposal. The scarcity of open space for landfill facilities, combined with a large waste-generating population, has forced New Jersey to expend tremendous government resources and energy to ensure safe and adequate disposal capacity for the waste generated by its citizens. Some of those efforts, such as New Jersey's 60 % recycling rate, have been huge successes. Others, such as its effort to preserve in-state landfill capacity for in-state generators, have not. See, *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

The legal uncertainty regarding permissible government regulation of solid waste collection and disposal has compounded the problem. After *Philadelphia v. New Jersey*, New Jersey's counties embarked on a State-mandated program to finance and build sufficient in-state capacity to dispose of New Jersey's waste. Critical to the success of this program was flow control, which guaranteed the flow of waste and revenue necessary to maintain this capacity. Flow control originally withstood legal challenge, based on a finding that the local benefits outweighed the incidental burden on commerce. *J. Filiberto Bros. Sanitation v. NJDEP*, 857 F.2d 913 (3rd Cir. 1988). However, long after over \$1.5 billion in public debt had been incurred to build facilities, the Third Circuit reversed its prior ruling, based on the U.S. Supreme Court's decision in *Carbone v. Town of Clarkstown*, 511 U.S. 383 (1994). *Atlantic Coast Demolition and Recycling v. Board of Freeholders, Atlantic County*, 48 F.3d 701 (3d Cir. 1995), after remand 112 F.3d 652 (3d Cir. 1997) cert. denied 522 U.S. 966 (1997).

Since the 1970's New Jersey has regulated the collection, processing and disposal of solid waste through the Solid Waste Management Act, N.J. Stat. Ann. 13:1E-1 et seq. ("SWMA"), and the Solid Waste Utility Control Act, N.J. Stat. Ann. 48:13A-1 et seq. ("SWUCA"). The SWMA requires each county to develop a comprehensive plan for the collection, transportation and disposal of all solid waste generated in the district. N.J. Stat. Ann. 13:1E-19, 13:1E-21. The New Jersey Department of Environmental Protection ("DEP") reviews and certifies each district plan to ensure its consistency with statewide solid waste management objectives, criteria and standards. N.J. Stat. Ann. 13:1E-24. Under SWUCA, all solid waste facilities in the state were designated as utilities, thus subject to rate regulation ensuring a guaranteed rate of return in exchange for agreeing to accept all waste from within their service areas. N.J. Stat. ann. 48:13A-1 et seq.

The need for comprehensive public management of solid waste in New Jersey arose out of a crisis in the 1970's, as the development of new, environmentally sound disposal sites could not keep pace with the closure of old dumps and the increase in solid waste generation. In addition, the Legislature's actions were prompted by New Jersey's long history of anti-competitive conduct in the solid waste industry. As unsafe facilities within the state were closed, New Jersey became a net exporter of waste. At times, New Jersey was turned away from out-of-state landfills, as neighboring states also grappled with

outdated and unsafe facilities. Accordingly, New Jersey pressed forward with its ambitious program to reduce the amount of waste it generates through mandatory recycling and to build state-of-the-art capacity for the remainder of its waste.

Counties that chose to build facilities financed those projects through revenue bonds issued by the counties or by their utility and improvement authorities. The revenue assured by the guaranteed flow of waste to the publicly owned facility backed these bonds, representing billions of dollars of public debt. By 1990, thirteen new facilities had been built with public funds.

After the Third Circuit determined in *Atlantic Coast* that *Carbone* invalidated New Jersey's waste flow system, each county struggled to address the new legal landscape. Those counties that contracted with private entities for solid waste services modified their systems. Disposal contracts were either rebid in a process open to both in-state and out-of-state bidders, as permitted by the decision in *Harvey & Harvey v. Delaware Solid Waste Authority*, 68 F.3d 788 (3d Cir. 1995) cert. denied 516 U.S. 1173 (1996), or waste was permitted to flow freely based on market forces or voluntary municipal contracts. \*

Counties, however, that expended public funds to construct facilities could not as easily modify their systems and still pay the debt incurred. Their rates were higher than many out-of-state facilities, due to factors such as availability of open space and density of population, the inability to reject unprofitable portions of the waste stream, and various taxes and surcharges designed to pay for recycling programs and ensure the proper closure of landfills. These counties could not simply reinstitute waste flow through a non-discriminatory bidding process, as the entity awarding the bid would also be one of the bidders. It was thus impossible to create the "level playing field" necessary to satisfy Federal Court prohibitions against discriminatory market practices. Other efforts to offset debt payments and allow these public facilities to compete economically with landfills in less populated areas also failed. (add re: *Environmental Investment Charges See, In the Matter of Passaic County Utilities Authority*, 164 N.J. 270 (2000) ).

As a result, the State has stepped in to subsidize the debt payments of certain counties and forgive certain solid waste-related state loans in order to prevent default and the difficulties that could result for public agencies statewide that seek to raise capital. These subsidies and loans, totaling over \$200 million dollars, are only a preliminary solution. Over \$1 billion in public solid waste debt remains outstanding. (Add re: EDA refinancing and state share of debt).

In *Philadelphia v. New Jersey*, 437 U.S. 617 (1978) the United States Supreme Court barred New Jersey from restricting the ability of private landfill operators to accept and process solid waste from outside the state. Although the Court recognized the economic and environmental goals of New Jersey's prohibition, it found that the means of achieving them "imposes on out-of-state commercial interests the full burden of conserving the State's remaining landfill space." *Id.* at 626-28. The Court, however, made clear that "[w]e express no opinion about New Jersey's power, consistent with the Commerce Clause, to restrict to state residents access to state-owned resources, ... or New Jersey's

power to spend state funds solely on behalf of state residents and businesses." *Id.* at 627, n.6 (citations omitted). Fourteen years later, in *Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources*, 504 U.S. 353 (1992), the Court applied the ruling in *Philadelphia v. New Jersey* to Michigan's solid waste management system, which prohibited private landfills from accepting waste from different counties within the State. Once again, the Court was careful to stress that the case did not "raise any question concerning policies that municipalities or other governmental agencies may pursue in the management of publicly owned facilities. The case involves only the validity of the Waste Import Restrictions as they apply to privately owned and operated landfills." *Id.* at 358-59. See also, *Oregon Waste Systems v. Department of Environmental quality, State of Oregon*, 511 U.S. 93, 106, (1994) n.9 (noting that the case did not require the court to decide whether Oregon could spread the cost of solid waste management through market participation or other means not involving the regulation of private interstate commerce).

*Carbone v. Town of Clarkstown*, 511 U.S. 383 (1994), upon which the opponents of flow control universally rely, also involved a private facility, and thus did not directly decide the issue raised in *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 261 F.3d 245 (2d. Cir. 2001). The Court did, however, note that public ownership and/or subsidy would effect the legality of a flow control measure. The Court stated:

Clarkstown maintains that special financing is necessary to ensure the long-term survival of the designated facility. If so, the town may subsidize the facility through general taxes or municipal bonds. But having elected to use the open market to earn revenues for its project, the town may not employ discriminatory regulation to give that project an advantage over rival businesses from out of State. *Id.* at 393.

Thus, the United States Supreme Court has not ruled on the legality of a flow control measure where a government agency, rather than electing "to use the open market," has instead invested public funds to control solid waste management within its borders and/or build public facilities.

The absence of a ruling on this issue has created a quagmire for local officials in New Jersey and elsewhere seeking to ensure safe and adequate disposal of waste generated by their citizens. *Carbone* has not been interpreted to require virtually automatic invalidation of flow control measures. Many Federal and State courts have permitted flow control under specific circumstances, so that the validity of these public measures literally depends on the jurisdiction in which the challenge is heard and hair-splitting distinctions between the provisions at issue.

For example, several courts have found that a government entity that enters the market as either a buyer or seller of solid waste disposal or collection services may regulate the flow of waste without violating the dormant Commerce Clause. The Courts of Appeals for the Third and Eighth Circuits have held that county and city-owned and operated landfills may bar waste from outside the jurisdiction. *Red River Service Corp. v. City of Minot*, North Dakota, 146 F.3d 583 (8th Cir. 1998); *Swin Resource Systems v. Lycoming*

County, Pa., 883 F.2d 245 (3d Cir. 1989) cert. denied 493 U.S. 1077 (1990) The Second Circuit in the decision below, held that a county could direct waste generated by its citizens to a local facility, as long as that facility was publicly owned. *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, supra, 261 F.3d 245. The Third Circuit, however, found New Jersey's system of directing waste to publicly owned facilities violated the Commerce Clause. *Atlantic Coast Demolition and Recycling v. Board of Freeholders, Atlantic County*, supra.

Where the government entities are the purchasers of solid waste services, the confusion is even greater. Several Courts of Appeals have held that a government entity may award exclusive rights to collect, process or dispose of waste as long as the system for choosing the exclusive provider does not discriminate against out-of-state bidders. *Maharg, Inc. v. Van Wert Solid Waste Management District*, 249 F.3d 544 (6th Cir. 2001) pet. cert. filed 70 U.S.L.W. 3291 (Oct. 10, 2001) (No. 01-615) *Houlton Citizens' Coalition v. Town of Houlton*, 175 F.3d; 178 (1st Cir. 1999); *Harvey & Harvey v. Delaware Solid Waste Authority*, 68 F.3d 788 (3d Cir. 1995). Others have held that regardless of the bidding process, a government entity may enter the market as a buyer of services from private companies without implicating the Commerce Clause, as long as certain criteria were met. See, *Huish Detergents, Inc. v. Warren County, Kentucky*, 214 F.3d 707 (6th Cir. 2000) (disposal ordinance and franchise agreement with private hauler unconstitutional absent expenditure of public funds); *SSC Corp. v. Town of Smithtown*, 66 F.3d 502 (2d Cir. 1995) cert. denied 516 U.S. 1112 (1996) (town may contract with a single private company for collection of its residents' waste and direct that company through contract to go to a particular disposal facility, but town can not use its regulatory power to force other collectors to use preferred disposal location); *USA Recycling v. Town of Babylon*, 66 F.3d 1272 (2d Cir. 1995) cert. denied, 517 U.S. 1135 (1996) (town may "take over" collection and disposal and eliminate private market consistent with Commerce Clause even if it imposes sanctions for violating flow control ordinance); *Barker Brothers Waste, Inc. v. Dyer County Legislative Body*, 923 F.Supp. 1042 (W.D. Tenn. 1996) (market participation exception to Commerce Clause applies to flow control ordinances only if the government entity participates in both the collection and the disposal market). But see, *Waste Recycling v. Southeast Alabama Solid Waste Disposal Authority*, 814 F.Supp. 1566 (M.D. Ala. 1993), *aff'd sub nom. Waste Recycling v. SE AI Solid*, 29 F.3d 641 (11th Cir. 1994) (market participant exception does not apply to exclusive town contract for collection that designates disposal site).

In November of 2001, the State of New Jersey filed an *amicus curiae* brief to the US Supreme Court on the appeal of the *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority* case. In that brief, the State indicated: "While granting certiorari in this case will not resolve all of the confusion in the Courts of Appeals regarding the permissible parameters of local government participation in solid waste markets, it will provide clarity in one key area that has never been resolved by this Court, i.e., whether local government discriminates against interstate commerce by expending public resources to comprehensively manage solid waste and provide for its disposal at public facilities. The Court below found that such a system was not the type of protectionist measure that implicates the Commerce Clause. The Third Circuit, however,

in striking down New Jersey's system, ignored the public/private distinction found determinative in this case.\* Other courts have done the same, without discussion of whether public ownership of the facility effected the Commerce Clause analysis. See, *Waste Systems Corp. v. County of Martin*, 985 F.2d 1381 (8th Cir. 1993); *Coastal Carting v. Broward County, Fla.*, 75 F.Supp. 2d. 1350 (S.D. Fla. 1999); *Waste Recycling, Inc. v. Southeast Alabama Solid Waste Disposal Authority*, 814 F.Supp. 1566 (M.D. Ala. 1993). Aff'd 29 F.3d 641 (11th Cir. 1994) Cf. *Southcentral Pennsylvania Waste Haulers' Association v. Bedford-Fulton-Huntingdon Solid Waste Authority*, 877 F. Supp. 935 (M.D. Pa. 1994)."

Unfortunately, the Supreme Court refused to hear the appeal of the Oneida-Herkimer case. As a result, inconsistent rulings in the Federal Appeals Courts have left unresolved certain issues related to government management of solid waste. Specifically, it is unclear whether or not the Commerce Clause is implicated when local government, using public money to construct disposal facilities, then flows waste to those facilities. In the Third Circuit, which includes New Jersey, it would appear as though the Commerce Clause is a prime consideration. However, in the Second Circuit, that would not appear to be the case.

#### A.2. County Solid Waste Management Planning

In 1970, the State of New Jersey adopted the Solid Waste Management Act ("SWMA") which established a regulatory framework for the implementation of environmental standards for solid waste management. The SWMA was amended in 1975 to establish the current solid waste management planning process. The 1975 amendments assigned primary planning responsibilities, subject to detailed state level review and approval, to 22 solid waste management districts, which are comprised of the 21 New Jersey counties and the New Jersey Meadowlands Commission (NJMC). The SWMA required the districts to develop solid waste systems that maximize the use of resource recovery technologies, including recycling, composting and incineration, in recognition of the state's need to reduce the dependence on landfill disposal. By the early 1980's, the Department had approved solid waste management plans for each of the 22 solid waste management districts as was required by the SWMA.

The development of county solid waste systems to meet the disposal needs for the waste generated by the residents of the state has been varied. Currently, as the following county summaries indicate, 13 districts/counties have solid waste landfills, one of these is a privately owned landfill, and 5 counties have resource recovery incinerators. Of the 5 counties with resource recovery incinerators, 3 also have landfills to receive non-processible waste. As a response to recent court decisions noted previously, 8 counties have demonstrated non-discriminatory bidding processes for solid waste systems and have approved solid waste disposal controls from the Department. The remaining 13 counties have a free market system for solid waste generated within their borders. Also, due to the previously noted debt situation that has arisen with the counties that have developed solid waste facilities or have attempted to develop facilities and have incurred

large debts, new solid waste facility development with public financing will be a challenge for both the counties and the state.

The New Jersey Solid Waste Database Trends Analysis table, located in the Appendix as [A-1](#), contains the solid waste generation, recycling and disposal statistics from 1985 through 2000. Also, located in Appendix table [A-2](#) is the Solid Waste Exports Table. As indicated in these tables, solid waste generation has been steadily increasing since 1985. Various factors may be responsible for the escalating solid waste generation rate such as the strong economic conditions New Jersey has experienced; population increases; and, increased product packaging for security against product tampering. The tables also indicate that during the same time period recycling tonnages have been static. The possible causes of the static recycling tonnages are addressed in the chapter on recycling. However, the increasing solid waste generation and static recycling tonnages have resulted in a decreasing recycling rate since 1997.

A comparison of the previous Statewide Solid Waste Management Plan and this Plan Update indicates the evolutionary process of county and state solid waste management planning. State and federal court actions have required great flexibility in the planning process. The Department firmly supports the provisions of the SWMA that commits to county primacy, with detailed state oversight, for the solid waste management planning process. In the recent past, proposals have been made in New Jersey legislature to localize solid waste management planning to the municipal level. It is the Department's position that the municipal government is not the appropriate level of government for the planning process because it would inhibit facility development and municipal government would not be able to comprehensively address emergency situations that occasionally arise for solid waste disposal.

The state, through this Solid Waste Management Plan Update, shall establish the overall policy objectives and goals for solid waste management in New Jersey. The counties and the NJMC shall have the responsibility for developing their respective district solid waste management plans consistent with the state goals and objectives. Therefore, each district shall within 180 days of the adoption of the Updated Statewide Solid Waste Management Plan, adopt and submit to the Department, an updated district solid waste plan. This district plan update shall demonstrate consistency with the State Plan.

## Current Status

### A.3. County Plan Summaries

#### Atlantic County

##### Current Status:

In 2000, Atlantic County generated approximately 737,000 tons of solid waste. The county recycled approximately 412,000 tons and disposed of 325,000 tons, which calculates to a 56% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 29%. Atlantic County has a total of 10 Class B

recycling facilities and 1 large and 5 small Class C (yard waste recycling facilities) recycling facilities.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, a majority of the county's waste (types 10, 13, 23, 25, and 27) was disposed of at GROWS Landfill in Pennsylvania via the Atlantic County Utilities Authority's Transfer Station at the ACUA Environmental Park in Egg Harbor Township, which was included in the County Plan on July 17, 1989. The ACUA Transfer Station began operation under a Temporary Certificate to Operate (TCAO) on August 8, 1990. The facility received a permit to operate from the Department on November 5, 1990. Furthermore, on December 13, 1988, the County adopted an amendment, which proposed an interim landfill at the same site in Egg Harbor Township. On May 26, 1989, the Department approved with modification this amendment requiring the submission of a viable bird deterrent plan for the proposed landfill. On July 25, 1989, the County adopted a subsequent amendment, which outlined a bird deterrent plan for the proposed interim landfill. On September 5, 1989, the Department rejected the July 25, 1989 amendment because the bird deterrent plan was not viable. The Department did however, state that a limited use landfill might be appropriate for the site. On November 14, 1989, the County adopted a subsequent amendment, which designated a limited use landfill for waste types 13 and 27 (bulky waste and dry industrial waste, respectively). The Department approved the limited use landfill designation on April 30, 1990. The ACUA Landfill in Egg Harbor Township received a Certificate of Authority to Operate (CAO) on March 18, 1992. Atlantic County had interdistrict agreements with Somerset, Hunterdon, and Cape May Counties, which have lapsed. The Mercer agreement remains in litigation.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Atlantic County established a free market strategy. On October 8, 1997, the Department issued to the ACUA a CAO for a research, development and demonstration project at the limited use landfill to accept 300 TPD of municipal waste. On September 17, 1998, the Department issued another CAO to extend the research, development and demonstration project until September 16, 1999 and increased the maximum amount of municipal waste that may be landfilled to 800 TPD and not to exceed 3,600 tons per week. In 2000, the Department approved a plan amendment to permit the disposal of municipal solid waste type 10 at the ACUA Landfill. On October 25, 2000, the Department issued a revised Solid Waste Permit, which permits the disposal of all waste at the ACUA Landfill. The Authority also owns and operates a state-of-the-art Recycling Center and Compost Facility which processes 52,000 tons per year. In addition, the ACUA provides solid waste, recycling, and yard waste collection services through contracts with municipalities, haulers, and businesses.

Bergen County  
Current Status:

In 2000, Bergen County generated approximately 1,720,000 tons of solid waste. The county recycled approximately 966,000 tons and disposed of approximately 754,000 tons, which equates to a 56% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 48%. There are currently 2 Class B recycling facilities and 4 large and 19 small Class C recycling facilities operating within Bergen County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, Bergen County employed a disposal strategy in which the county's waste was delivered to either the Bergen County Utilities Authority (BCUA) Transfer Station, located in the Borough of North Arlington, or one of several private transfer stations prior to out-of-district disposal. The BCUA Transfer Station was included in the County Plan on January 27, 1988.

Bergen also entered into interdistrict agreements with Essex and Union Counties to deliver waste to their respective resource recovery facilities. These agreements, however, have now expired or are void.

#### Post-Atlantic Coast Strategy:

Bergen County is currently implementing a 3-year interim solid waste plan which employs a free market system with each municipality charged with the responsibility of finding a solid waste disposal facility, regardless of the location of such facility, for their respective wastes. The County is currently conducting studies and formulating data to determine a proper long-term solid waste management plan for the district after the 3-year interim plan is concluded.

32 municipalities within the county currently use the BCUA's inactive Kingsland Park Landfill site for the composting of leaves. 34 municipalities use either municipal sites or private vendors for leaf composting. The county has not yet identified the leaf disposal option(s) of four municipalities within the County Plan. The BCUA is currently in the process of developing a long-term plan for the composting of vegetative wastes.

A recent Bergen County amendment provided a mechanism for the elimination of the BCUA's solid waste system revenue bond debt. The funds for the bond elimination will come from the sale of the inactive Kingsland Park Sanitary Landfill (KPSL), located in North Arlington and Lyndhurst, and the BCUA Transfer Station, located in North Arlington, and other available funds, including the county's Resource Recovery Investment Tax Fund, the KPSL Closure Fund, State of New Jersey funds, and BCUA restricted and unrestricted cash funds.

#### Burlington County Current Status:



In 2000, Burlington County generated approximately 773,000 tons of solid waste. The county recycled approximately 345,000 tons and disposed of about 427,000 tons, which equates to a 45% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 34%. Burlington County currently has 4 Class B recycling facilities and 2 large and 14 small Class C recycling facilities.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Burlington County's solid waste was disposed of at the Burlington County Landfill, which is part of the Burlington County Solid Waste Management Facilities Complex in Florence and Mansfield Townships. This facility was included in the County Plan on November 10, 1982, and was originally permitted by the Department of December 14, 1987.

#### Post-Atlantic Coast Strategy:

As a result of the Atlantic Coast decision, Burlington County instituted a market participant strategy, which provides for voluntary delivery of solid waste and sludge to the Burlington County Solid Waste Management Facilities Complex (Complex) in Florence and Mansfield Townships for resource recovery. The Complex has a landfill, bulky waste transfer capabilities, and a household hazardous waste center.

### Camden County

#### Current Status:

In 2000, Camden County generated approximately 901,000 tons of solid waste. The county recycled about 424,000 tons and disposed of about 477,000 tons, which equates to a 47% recycling rate for the total waste stream. The County's documented municipal waste stream recycling rate was 33%. Camden County currently has 4 Class B recycling facilities, 3 large and 5 small Class C recycling facilities, and 1 Class D recycling facility.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Camden County's processible solid waste was disposed of at the South Camden Resource Recovery Facility. This facility was originally included in the County Plan on December 18, 1984. Construction of the facility was completed in March of 1991 and operations commenced in December 16, 1991. The Department issued a permit on June 27, 1996. Ash from the incinerator was disposed of out-of-state. The bypass and non-processible waste was taken to the Pennsauken Landfill, which was included in the County Plan on October 5, 1982, and permitted by the Department on August 31, 1989.

#### Post-Atlantic Coast Strategy:

As a result of the Atlantic Coast decision, Camden County adopted the Plan inclusion of a strategy to complete a nondiscriminatory procurement process for securing waste

disposal services; also, Camden County implemented a strategy to regulate the flow of waste as a market regulator. Using the nondiscriminatory bidding process, Camden County has entered into a new service agreement between the Pollution Control Finance Authority of Camden County (PCFACC), and Camden County Energy Recovery Associates (Camden County RRF), which has instituted the reestablishment of waste flow regulation within Camden County. As before, the ash from the incinerator is to be disposed of out-of-state and the bypass and non-processible waste is to be taken to the Pennsauken Landfill.

#### Cape May County

##### Current Status:

In 2000, Cape May County generated 436,000 tons of solid waste. The county recycled about 261,000 tons and disposed of 175,000 tons, which equates to a 60% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 33%. The county's documented municipal waste stream recycling rate was 33%. Cape May County currently has 1 Class A recycling facility, 4 Class B recycling facilities, and 1 small Class C recycling facility.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Cape May County's solid waste was disposed of at the Cape May County Municipal Utilities Authority (CMCMUA) Sanitary Landfill, which is located on the Woodbine Borough/Upper Township border. The CMCMUA Landfill was included in the County Plan on March 1, 1983 and received a permit to operate from the Department on August 12, 1983. Most municipalities direct-hauled to the landfill, while others used the CMCMUA Transfer Station in Middle Township. Also, an Intermediate Processing Facility (Class A), a bulky waste recycling facility (Class B) and an exempt leaf composting facility are operated at the landfill site.

##### Post-Atlantic Coast Strategy

As a result of the Atlantic Coast decision, Cape May County adopted an intrastate disposal strategy which mandates that all non-recycled solid waste generated within Cape May County and which is not transported out-of-state for disposal shall be disposed of at the CMCMUA Sanitary Landfill located in Woodbine Borough and Upper Township, Cape May County. As an alternative to disposal at the CMCMUA Landfill, a solid waste hauler/transporter may transport non-recycled Cape May County generated solid waste to any permitted out-of-state solid waste disposal facility authorized to accept such waste and may utilize in-state transfer stations and materials recovery facilities prior to disposal out-of-state.

#### Cumberland County

##### Current Status:

In 2000, Cumberland County generated about 391,000 tons of solid waste. The county recycled approximately 223,000 tons and disposed of 168,000 tons, which equates to a

57% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 44%. Cape May County currently has 4 Class B recycling facilities, 1 large and 7 small Class C recycling facilities, and 1 Class D recycling facility.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Cumberland County's waste was disposed of at the Cumberland County Landfill, which was part of the Cumberland County Solid Waste Complex, located in Deerfield Township. This facility was included in the County Plan on March 15, 1984 and received a permit from the Department on December 30, 1985.

#### Post-Atlantic Coast Strategy:

As a result of the Atlantic Coast decision, Cumberland County adopted a Market Participant Strategy. This strategy allowed continued access to the Cumberland County Improvement Authority's (CCIA or Improvement Authority) solid waste management system to be made available on a voluntary participation basis through the execution of contracts with the County's fourteen municipalities; private collectors/haulers; and governmental, private or institutional generators of waste. Upon execution of a contract with a municipality, the CCIA shall offer: disposal capacity; processing and marketing of recyclables; access to a minimum of one annual household hazardous waste collection event; free disposal of roadside litter, and limited amounts of bulky waste and demolition debris; program support; and pro-rata rebate of revenues from the recycling program (as long as no statewide recycling tax is in effect). Municipalities that do not elect to utilize the Cumberland County Solid Waste Complex Landfill shall not receive any above noted services of the system. Further, if a municipality does not execute a disposal contract with the CCIA before a date to be specified by the CCIA, and later seeks to utilize the system, the Improvement Authority may assess a fee in excess of the fee charged to municipalities which did execute contracts by the specified date. The CCIA will execute contracts with private collector/haulers and waste generators to provide disposal but no other services.

#### Essex County

##### Current Status:

In 2000, Essex County generated approximately 1,630,000 tons of solid waste. The county recycled approximately 899,000 tons and disposed of approximately 731,000 tons, which equates to a 55% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 42%. There are currently 3 Class B recycling facilities and 1 large and 7 small Class C recycling facilities operating within Essex County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Essex County's processible solid waste was disposed of at the Essex County Resource Recovery Facility (ECRRF). This facility was originally included in the County Plan on July 1, 1981 and began operating in November

of 1990. Ash from the incinerator and bypass and non-processible wastes were disposed of at out-of-state landfills.

#### Post-Atlantic Coast Strategy:

Essex County employs a bifurcated system for the disposal of processible solid wastes. The system includes either entering into voluntary contracts with the county for disposal of their processible wastes at the ECRRF or to have their solid waste directed to either the Ellesor Transfer Station, located in the City of Elizabeth, Union County, or the Hillsdale Transfer Station, located in Hillsdale Township, Bergen County, for processing prior to out-of-state disposal. In 2000, 76% of the county's wastes were disposed of at the ECRRF. 24% of the county's wastes were disposed of at out-of-state facilities. Ash from the resource recovery facility is direct-hauled out-of-state.

Essex County currently delivers its non-processible solid waste (Type 13 and 13C, the non-recycled portion of Type 23, the non-processible portion of Type 27, and bypass waste) to the Waste Management of New Jersey, Inc. Transfer Station/Materials Recovery Facility located at 666 Front Street in Elizabeth, Union County for processing prior to out-of-state disposal at the Alliance Landfill, located in Taylor, Pennsylvania.

#### Gloucester County

##### Current Status:

In 2000, Gloucester County generated approximately 665,000 tons of solid waste. The county recycled about 428,000 tons and disposed of 237,000 tons, which equates to a 64% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 47%. Gloucester County currently has 4 Class B recycling facility and 1 large and 8 small Class C recycling facilities.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Gloucester County's processible municipal waste was disposed of at the Gloucester incinerator in West Deptford and all bypass, non-processible waste and non-hazardous ash was disposed of at the Gloucester County Landfill in South Harrison. The Gloucester County RRF was included in the County Plan on March 4, 1985 and the Gloucester County Landfill was originally included on December 27, 1984.

#### Post-Atlantic Coast Strategy:

As a result of the Atlantic Coast decision, Gloucester County adopted a nondiscriminatory procurement bidding process to solicit bids for the disposal of the County's solid waste.

Gloucester County has adequately demonstrated that it secured a disposal contract with Wheelabrator Gloucester Company, L.P. in a nondiscriminatory manner. All acceptable waste types (i.e., waste comprising non-recycled portions of type 10 municipal waste, portions of type 13 bulky waste, type 23 vegetative waste, and the non-animal portion of type 25 animal and food processing waste) are directed to the Wheelabrator Resource Recovery Facility located in West Deptford Township. Furthermore, the vertical expansion of the GCIA Landfill in South Harrison, which continues to receive by-pass waste from the Wheelabrator Resource Recovery Facility, as well as residual ash waste, non-processible waste and C & D waste will provide a useful life of the landfill until approximately 2012.

#### Hudson County

##### Current Status:

In 2000, Hudson County generated 1,040,000 tons of solid waste. The county recycled 493,000 tons and disposed of 547,000 tons, which equates to a 47% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 30%. There are currently 7 Class B recycling facilities and 1 large and 2 small Class C recycling facilities operating within Hudson County.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, the majority of Hudson County's wastes were directed to the Hackensack Meadowlands Development Commission (HMDC) Baler facility for processing prior to disposal. This facility was included in the HMDC District Plan on November 23, 1982. After processing, Type 10 solid waste was disposed of at the 1-E Landfill, located in North Arlington, Bergen County and Township of Kearny, Hudson County, which was included in the HMDC District Plan on April 19, 2000. Type 13, 23, 25, and 27 wastes were sent to the Empire Landfill, located in Taylor, Pennsylvania.

##### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Hudson County adopted a waste strategy based on regulatory flow control based upon nondiscriminatory procurement. Currently, all waste types 10 and 25 not collected either by a municipality or through a contract with a municipality (up to 100,000 tons annually) are delivered to the Union County Resource Recovery Facility, located in the City of Rahway, Union County.

All waste types 10 and 25 collected by a municipality or through a contract with a municipality (up to 300,000 tons annually) are delivered to the Solid Waste Transfer & Recycling, Inc. Transfer Station, located in the City of Newark, Essex County for processing prior to disposal at the Grand Central Landfill, located in Pen Argyl, Pennsylvania.

All waste types 13, 23, and 27 are disposed of at the New Jersey Meadowlands Commission I-E North Area Landfill.

#### Hunterdon County

##### Current Status:

In 2000, Hunterdon County generated 173,000 tons of solid waste. The county recycled 47,000 tons and disposed of 127,000 tons, which equates to a 27% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 19%. There is currently 1 Class B recycling facility and 2 small Class C recycling facilities operating within Hunterdon County.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, the county's solid waste was directed to the Hunterdon County Transfer Station, located in Clinton Township, for processing prior to out-of-district disposal. This facility was included in the County Plan on June 12, 1984. The Hunterdon/Warren Interdistrict Agreement, entered into on July 23, 1986 provided for the disposal of 100 tons per day of Hunterdon County's processible solid waste to the Warren County Resource Recovery Facility, located in Oxford Township until December 31, 2001.

##### Post-Atlantic Coast Strategy:

Hunterdon County has yet to respond to the Atlantic Coast decision. Currently, the county's waste is brought to one of two transfer stations for processing prior to out-of-district disposal.

#### Mercer County

##### Current Status:

In 2000, Mercer County generated approximately 609,000 tons of solid waste. The county recycled about 243,000 tons and disposed 366, tons, which equates to a 40% recycling rate for the total waste stream. The county documented municipal waste stream recycling rate was 33%. Mercer County currently has 4 Class B recycling facility and 3 large and 4 small Class C recycling facilities.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, Mercer County's waste was directed to the Mercer County Improvement Authority Transfer Station in Ewing Township (which was included in the original County Plan on June 24, 1980) prior to disposal out-of-state at the Waste Management, Inc. GROWS Landfill in Tullytown, Pennsylvania. Mercer County began directing waste types 10, 13, 23, 25 and 27 to GROWS Landfill on December 13, 1983. Mercer County also has in interdistrict agreement with Atlantic County, however it is now void. Also, Mercer County included in the County Plan a resource recovery facility on October 14, 1986; however, the construction of the facility never came to

fruition, and the facility was subsequently removed from the County Plan on December 29, 1997.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Mercer County demonstrated that it secured a disposal contract in a nondiscriminatory manner with GROWS Landfill, an out-of-state facility; therefore, Mercer County has been able to continue to direct its solid waste to the GROWS Landfill. Furthermore, the County adopted a strategy for nondiscriminatory procuring of transfer services, which allowed Mercer County to continue to direct all solid waste to the Mercer Transfer Station in Ewing prior to shipment out-of-state.

#### Middlesex County

##### Current Status:

In 2000, Middlesex County generated 2,292,000 tons of solid waste. The county recycled 1,497,000 tons and disposed of 795,000 tons, which equates to a 65% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 40%. There are currently 15 Class B recycling facilities, 3 large and 3 small Class C recycling facilities, and 1 Class D recycling facility operating within Middlesex County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Middlesex County's solid waste was disposed of at the Middlesex County Landfill, located in the Township of East Brunswick. This facility, formerly known as the Edgeboro Landfill, commenced operations in 1954 and was included in the County Plan on September 16, 1982. The Middlesex County Utilities Authority assumed operation of the Edgeboro Landfill from Edgeboro Disposal, Inc. on January 1, 1988.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Middlesex County has become a market participant for the solid waste generated within its borders. As a result, Middlesex County offered each of the 25 municipalities within the County voluntary contracts to dispose of their respective solid wastes at the Middlesex County Landfill.

#### Monmouth County

##### Current Status:

In 2000, Monmouth County generated approximately 1,291,000 tons of solid waste. The county recycled about 679,000 tons and disposed about 612,000 tons, which equates to a 53% recycling rate for the total waste stream. The county documented municipal waste stream recycling rate was 40%. Monmouth County currently has 13 Class B recycling facilities and 2 large and 11 small Class C recycling facilities.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Monmouth County's waste was disposed of at the Monmouth County Reclamation Center shredder and landfill facility in Tinton Falls Borough. The facility has been included in the County Plan since July 23, 1981.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Monmouth County revised its disposal strategy to an intrastate waste flow, which mandates that all type 10 (municipal) solid waste generated from within Monmouth County that is not disposed of out-of-state, is to be disposed of at the Monmouth County Reclamation Center located in Tinton Falls.

#### Morris County

##### Current Status:

In 2000, Morris County generated 866,000 tons of solid waste. The county recycled 440,000 tons and disposed of 426,000 tons, which equates to a 51% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 45%. There are currently 3 Class B recycling facilities and 2 large and 8 small Class C recycling facilities operating within Morris County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, Morris County's waste was directed to the one of the Morris County Municipal Utilities Authority's two transfer stations located in Parsippany-Troy Hills and Mt. Olive Township (which were both included in the County Plan on April 1, 1987) prior to disposal in Pennsylvania landfills. Morris County directed waste types 10, 13, 23, 25, and 27 from 17 of its 39 municipalities to the Mt. Olive Transfer Station. The remaining 22 municipalities were directed to the Parsippany-Troy Hills Transfer Station for processing.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Morris County has reaffirmed the solid waste disposal system that was in effect prior to the decision. The system includes two non-discriminatorily procured contracts to process, transfer, and/or dispose of the county's solid waste: the January 6, 1993 contract with Waste Management of Pennsylvania, Inc. for out-of-state landfill disposal; and the November 7, 1997 contract with Morris County Transfer Station, Inc. for the operations of two transfer stations and the transportation of the solid waste to the out-of-state landfill facility.

#### Ocean County

##### Current Status:

In 2000, Ocean County generated approximately 1,017,000 tons of solid waste. The county recycled about 496,000 tons and disposed about 521,000 tons, which equates to a 49% recycling rate for the total waste stream. The county documented municipal waste



stream recycling rate was 33%. Ocean County currently has 7 Class B recycling facilities and 3 large and 6 small Class C recycling facilities.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Ocean County's waste was disposed of at the Ocean County Landfill Corporation Landfill located in Manchester Township. This landfill has been operational since 1973, with an original permit dated May 10, 1972.

#### Post-Atlantic Coast Strategy:

Ocean County has not revised its disposal strategy in response to the Atlantic Coast decision. All of the County's waste continues to be disposed of at the Ocean County Landfill Corporation Landfill.

#### Passaic County

##### Current Status:

In 2000, Passaic County generated 953,000 tons of solid waste. The county recycled 526,000 tons and disposed of 427,000 tons, which equates to a 55% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 42%. There are currently 6 Class B recycling facilities and 1 large and 11 small Class C recycling facilities operating within Passaic County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, Passaic County directed its waste to private transfer stations, located within the county, for processing prior to out-of-district disposal. The County resource recovery facility, included in the County Plan on February 21, 1985, was never constructed.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, waste generated within Passaic County is currently directed to one of several private transfer stations, located within the county, for processing prior to out-of-state disposal. The county signed a non-discriminatorily obtained agreement for solid waste disposal rights for fifteen years through 2008 at the Alliance Landfill, located in Taylor, Pennsylvania on December 7, 1992.

#### Salem County

##### Current Status:

In 2000, Salem County generated about 135,000 tons of solid waste. The county recycled about 38,000 tons and disposed about 97,000 tons, which equates to a 29% recycling rate for the total waste stream. The county documented municipal waste stream recycling rate was 28%. These rates may be misleading since DuPont (a major corporation) generates a major portion (nearly 50%) of the County's solid waste and does not contribute

significantly to the County's recycling tonnage. Salem County currently has 2 Class B recycling facility and 1 Class D recycling facility.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Salem County's waste was disposed of at the Salem County Regional Landfill in Alloway Township. The Landfill has been in the County Plan since April 6, 1983 and was originally permitted by the Department on April 15, 1987.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Salem County adopted a market participant strategy, which provides for voluntary delivery of solid waste to the Salem County Solid Waste Facility.

#### Somerset County

##### Current Status:

In 2001, Somerset County generated 575,000 tons of solid waste. The county recycled 239,000 tons and disposed of 336,000 tons, which equates to a 42% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 27%. There are currently 5 Class B recycling facilities and 3 small Class C recycling facilities operating within Somerset County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, Somerset County waste was brought to one of two transfer stations for processing, prior to disposal at out-of-district landfills. The two transfer stations, the Somerset Intermediate Recycling Center (SIRC) Transfer Station and the Bridgewater Resources, Inc. (BRI) Transfer Station were included in the County Plan on August 7, 1984 and November 19, 1986, respectively. The SIRC Transfer Station was located in Franklin Township. The BRI site is located in Bridgewater Township.

The Somerset/Warren Interdistrict Agreement, entered into on July 11, 1990 provided for the disposal of 1400 tons per week of Somerset County's processible solid waste to the Warren County Resource Recovery Facility, located in Oxford Township until December 31, 2001.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Somerset County's solid waste is delivered to the BRI transfer station for processing prior to out-of-state disposal.

The validity of the Somerset/Warren Interdistrict Agreement, which allowed for the delivery of approximately 1977 tons of processible solid waste per week to the Warren

County Resource Recovery Facility, located in Oxford Township, from January 1, 2002 until November 30, 2008 is currently being adjudicated in the courts.

#### Sussex County

##### Current Status:

In 2000, Sussex County generated 197,000 tons of solid waste. The county recycled 78,000 tons and disposed of 119,000 tons, which equates to a 40% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 27%. There are currently 2 Class B recycling facilities and 6 small Class C recycling facilities operating within Sussex County.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Sussex County's solid waste was disposed of at the Sussex County Municipal Utilities Authority (SCMUA) Landfill, which is located in the Township of Lafayette. This facility was included in the County Plan on May 14, 1985 and was originally permitted by the Department on November 13, 1987.

##### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Sussex County has become a market participant for the solid waste generated within its borders.

#### Union County

##### Current Status:

In 2000, Union County generated 1,107,000 tons of solid waste. The county recycled 569,000 tons and disposed of 538,000 tons, which equates to a 51% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 29%. There are currently 3 Class B recycling facilities, 1 large and 2 small Class C recycling facilities, and 1 Class D recycling facility operating within Union County.

##### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, all of Union County's type 10 and 25 waste was disposed of at the Union County Resource Recovery Facility (UCRRF) in the City of Rahway and all ash and bypass waste was disposed of at out-of-state landfills. The UCRRF was included in the County Plan on April 5, 1984 and began operating in February of 1994. All solid waste types 13, 23, and 27 generated from within Union County were directed to one of two transfer stations/material recovery facilities for processing. All residue generated from either of the two transfer station/materials recovery facilities was directed to the Linden Landfill, located in the City of Linden, which was included in the County Plan on November 23, 1982. The Linden Landfill closed in 1999.

Union also entered into an interdistrict agreement with Bergen County to accept up to 192,000 tons per year of Bergen's processible solid waste at the UCRRF. This agreement, however, is now void.

#### Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Union County has become a market participant for the solid waste. As a result, the county offered each of the 21 municipalities within the county voluntary contracts to dispose of their respective type 10 and 25 solid waste at the UCRRF. The UCRRF also currently accepts solid waste from Hudson County.

All non-recycled solid waste types 13, 23, and 27 generated from within Union County are directed to the New Jersey Meadowlands Commission (NJMC) Transfer Station and Materials Recovery Facility, located in the Township of Kearny, Hudson County, and the Borough of North Arlington, Bergen County, for the provision of bulky waste and industrial waste recycling facility services. All residue remaining after recycling of solid waste types 13, 23, and 27 at the NJMC Transfer Station and Materials Recovery Facility is directed to the 1-E North Area Landfill, located in the Borough of North Arlington, for disposal.

Ash from the Union County RRF and bypass waste is delivered to out-of-state landfills for disposal.

#### Warren County

##### Current Status:

In 2000, Warren County generated 146,000 tons of solid waste. The county recycled 47,000 tons and disposed of 99,000 tons, which equates to a 32% recycling rate for the total waste stream. The county's documented municipal waste stream recycling rate was 19%. There is currently 1 Class B recycling facility and 2 large and 1 small Class C recycling facilities operating within Warren County.

#### Pre-Atlantic Coast Strategy:

Prior to the Atlantic Coast decision, the county's processible waste was directed to the Warren County Resource Recovery Facility (WCRRF) in Oxford Township, which was included in the County Plan on November 21, 1984 and received a permit to operate from the Department on October 15, 1987. The WCRRF began operating in July 1988. Ash from the WCRRF and non-processible and bypass wastes were disposed of at the Warren County District Landfill in White Township, which was included in the County Plan on March 6, 1985, and received a permit to operate from the Department on September 30, 1987. Warren County also accepted solid waste from Hunterdon and Somerset Counties at the WCRRF pursuant to interdistrict agreements entered into on July 23, 1986 and July 11, 1990, respectively.

Post-Atlantic Coast Strategy:

In response to the Atlantic Coast decision, Warren County has become a market participant for solid waste. Ash from the WCRRF, and non-processible and bypass wastes are delivered to the Warren County Landfill for disposal.

The Hunterdon/Warren Interdistrict agreement expired on January 1, 2002. The validity of the Somerset/Warren Interdistrict agreement, which is set to expire on December 1, 2008, is currently being adjudicated in the courts.